

NOTE: CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STAR FABRICS, INC., a California
Corporation,

Plaintiff,

vs.

HAUTELOOK, INC., *et al.*,

Defendants.

Case No. CV14-3159 JFW (FFMx)

[DISCOVERY MATTER]

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Complaint Filed: April 24, 2014

Trial Date: April 21, 2015

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this matter would be warranted. Accordingly, the parties hereby stipulate to and petition this Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties have agreed that the terms of this Protective Order shall also apply to any future voluntary disclosures of confidential, proprietary, or private information. The parties reserve their rights to

1 object to or withhold any information, including confidential, proprietary, or private
2 information, on any other applicable grounds permitted by law, including third-party
3 rights and relevancy.

4 2. DEFINITIONS

5 2.1 Party: any party to this action, including all of its officers, directors,
6 employees, consultants, retained experts, and outside counsel (and their support staff).

7 2.2 Disclosure or Discovery Material: all items or information,
8 regardless of the medium or manner generated, stored, or maintained (including, among
9 other things, testimony, transcripts, or tangible things), that are produced or generated in
10 disclosures or responses to discovery in this matter.

11 2.3 “Confidential” Information or Items: information (regardless of how
12 generated, stored, or maintained) or tangible things that qualify for protection under
13 standards developed under Fed.R.Civ.P. 26(c).

14 2.4 “Attorneys’ Eyes Only”: Discovery Material or such portion of such
15 material as consists of:

16 a) any commercially sensitive and/or confidential business or
17 financial information (including without limitation confidential nonpublic contracts,
18 profitability reports or estimates, sales reports, and sales margins);

19 b) any business or financial information that is confidential,
20 proprietary, or commercially sensitive to third parties who have had business dealings
21 with parties to this action; or

22 c) any other category of material or information hereinafter given
23 Confidential status by the Court.

24 2.5 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26 2.6 Producing Party: a Party or non-party that produces Disclosure or
27 Discovery Material in this action.

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1 2.7 Designating Party: a Party or non-party that designates information
2 or items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

4 2.8 Protected Material: any Disclosure or Discovery Material that is
5 designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

6 2.9 Expert: a person with specialized knowledge or experience in a
7 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
8 as an expert witness or as a consultant in this action. This definition includes a
9 professional jury or trial consultant retained in connection with this litigation. The
10 expert witness or consultant may not be a past or a current employee of the Party
11 (including any affiliates or related entities) adverse to the Party engaging the expert
12 witness or consultant, or someone who at the time of retention is anticipated to become
13 an employee of the Party (including any affiliates or related entities) adverse to the
14 Party engaging the expert witness or consultant. Moreover, the expert witness or
15 consultant may not be a current employee or anticipated to become an employee of any
16 entity who is a competitor of the Party adverse to the Party engaging the expert witness
17 or consultant.

18 2.10 Professional Vendors: persons or entities that provide litigation
19 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or
20 demonstrations; organizing, storing, or retrieving data in any form or medium; etc.) and
21 their employees and subcontractors.

22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only Protected
24 Material (as defined above), but also any information copied or extracted therefrom, as
25 well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
26 conversations, or presentations by parties or counsel to or in litigation or in other
27 settings that might reveal Protected Material.

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1 4. DURATION

2 Even after the termination of this action, the confidentiality obligations imposed
3 by this Order shall remain in effect until a Designating Party agrees otherwise in writing
4 or a court order otherwise directs.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for
7 Protection. Each Party or non-party that designates information or items for protection
8 under this Order must take care to limit any such designation to specific material that
9 qualifies under the appropriate standards. A Designating Party must take care to
10 designate for protection only those parts of material, documents, items, or oral or
11 written communications that qualify – so that other portions of the material, documents,
12 items, or communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited.
15 Designations that are shown to be clearly unjustified, or that have been made for an
16 improper purpose (*e.g.*, to unnecessarily encumber or retard the case development
17 process, or to impose unnecessary expenses and burdens on other parties), expose the
18 Designating Party to sanctions.

19 If it comes to a Party's or a non-party's attention that information or items
20 that it designated for protection do not qualify for protection at all, or do not qualify for
21 the level of protection initially asserted, that Party or non-party must promptly notify all
22 other parties that it is withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided
24 in this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise
25 stipulated or ordered, material that qualifies for protection under this Order must be
26 clearly so designated before the material is disclosed or produced.

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1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (apart from transcripts
3 of depositions or other pretrial or trial proceedings), that the Producing Party affix the
4 legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” at the top or bottom of
5 each page that contains protected material.

6 A Party or non-party that makes originals or copies of documents or
7 materials available for inspection need not designate them for protection until after the
8 inspecting Party has indicated which material it intends to copy. During the inspection
9 and before the designation, all of the material made available for inspection shall be
10 deemed “ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
11 documents it wants copied and produced, the Producing Party must designate, either in
12 writing or on the record (at a deposition), which documents, or portions thereof, qualify
13 for protection under this Order. Then the Receiving Party must affix the
14 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” legend at the top of each
15 copied page that contains Protected Material. If only a portion or portions of the
16 material on a page qualifies for protection, the Producing Party also must clearly
17 identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins)
18 and must specify, for each portion, the level of protection being asserted (either
19 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”).

20 (b) for testimony given in deposition or in other pretrial or trial
21 proceedings, (FFM) that the Party or non-party offering or sponsoring the testimony
22 identify on the record, before the close of the deposition, ~~hearing, or other proceeding,~~
23 **(FFM)** all protected testimony, and further specify any portions of the testimony that
24 qualify as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” When it is
25 impractical to identify separately each portion of testimony that is entitled to protection,
26 and when it appears that substantial portions of the testimony may qualify for
27 protection, the Party or non-party that sponsors, offers, or gives the testimony may
28 invoke on the record (before the deposition ~~or proceeding~~ **(FFM)** is concluded) a right

1 to have up to 20 days to identify the specific portions of the testimony as to which
 2 protection is sought and to specify the level of protection being asserted
 3 (“CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”). Only those portions of the
 4 testimony that are appropriately designated for protection within the 20 days shall be
 5 covered by the provisions of this Stipulated Protective Order.

6 Transcript pages containing Protected Material must be separately
 7 bound by the court reporter, who must affix to the top of each such page the legend
 8 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” as instructed by the Party or
 9 non-party offering or sponsoring the witness or presenting the testimony.

10 (c) for information produced in some form other than
 11 documentary, and for any other tangible items, that the Producing Party affix in a
 12 prominent place on the exterior of the container or containers in which the information
 13 or item is stored the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If
 14 only portions of the information or item warrant protection, the Producing Party, to the
 15 extent practicable, shall identify the protected portions, specifying whether they qualify
 16 as “CONFIDENTIAL” or as “ATTORNEYS’ EYES ONLY.”

17 5.3 Inadvertent Failures to Designate. If timely corrected, an
 18 inadvertent failure to designate qualified information or items as “CONFIDENTIAL” or
 19 “ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating
 20 Party’s right to secure protection under this Order for such material. If material is
 21 appropriately designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”
 22 after the material was initially produced, the Receiving Party, on timely notification of
 23 the designation, must make reasonable efforts to assure that the material is treated in
 24 accordance with the provisions of this Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
 27 Party’s confidentiality designation is necessary to avoid foreseeable substantial
 28 unfairness, unnecessary economic burdens, or a later significant disruption or delay of

1 the litigation, a Party does not waive its right to challenge a confidentiality designation
2 by electing not to mount a challenge promptly after the original designation is disclosed.

3 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
4 Designating Party's confidentiality designation must do so in good faith and must begin
5 the process by conferring with counsel for the Designating Party in writing. In
6 conferring, the challenging Party must explain the basis for its belief that the
7 confidentiality designation was not proper and must give the Designating Party an
8 opportunity to review the designated material, to reconsider the circumstances, and, if
9 no change in designation is offered, to explain the basis for the chosen designation. A
10 challenging Party may proceed to the next stage of the challenge process only if it has
11 engaged in this meet-and-confer process first.

12 6.3 Court Intervention. A Party that elects to press a challenge to a
13 confidentiality designation after considering the justification offered by the Designating
14 Party may file and serve a motion that identifies the challenged material and sets forth
15 in detail the basis for the challenge. Each such motion must be accompanied by a
16 competent declaration that affirms that the movant has complied with the meet-and-
17 confer requirements imposed in the preceding paragraph and that sets forth with
18 specificity the justification for the confidentiality designation that was given by the
19 Designating Party in the meet-and-confer dialogue. **Any such motion must comply**
20 **with Local Rule 37. (FFM)** The parties agree that a confidentiality designation shall
21 not create a presumption in favor of such confidentiality designation, and that the Court
22 shall decide the issue as such.

23 Until the Court rules on the challenge, all parties shall continue to afford
24 the material in question the level of protection to which it is entitled under the
25 Producing Party's designation.

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1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that
3 is disclosed or produced by another Party or by a non-party in connection with this case
4 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
5 Material may be disclosed only to the categories of persons and under the conditions
6 described in this Order. When the litigation has been terminated, a Receiving Party
7 must comply with the provisions of section 11, below (FINAL DISPOSITION).

8 Protected Material must be stored and maintained by a Receiving Party at a
9 location and in a secure manner that ensures that access is limited to the persons
10 authorized under this Order.

11 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
12 otherwise ordered by the Court or permitted in writing by the Designating Party, a
13 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
14 only to:

15 (a) the Receiving Party’s outside counsel, as well as employees of
16 said outside counsel to whom it is reasonably necessary to disclose the information for
17 this litigation;

18 (b) Board members, officers and directors of the Receiving Party;

19 (c) Other employees of the Receiving Party to whom disclosure is
20 reasonably necessary for this litigation and who are bound by internal confidentiality
21 obligations as part of their employment or who have signed the “Acknowledgment and
22 Agreement to Be Bound” (Exhibit A);

23 (d) Experts (as defined in this Order) of the Receiving Party to
24 whom disclosure is reasonably necessary for this litigation and who have signed the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

26 (e) the Court personnel assigned to this litigation;

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1 (f) court reporters, their staffs, and professional vendors to whom
2 disclosure is reasonably necessary for this litigation and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (g) during their depositions, witnesses in the action to whom
5 disclosure is reasonably necessary and who have signed the “Acknowledgment and
6 Agreement to Be Bound” (Exhibit A). Pages of transcribed deposition testimony or
7 exhibits to depositions that reveal Protected Material must be separately bound by the
8 court reporter and may not be disclosed to anyone except as permitted under this
9 Stipulated Protective Order; and

10 (h) the author and recipients of the document or the original
11 source of the information.

12 7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items.

13 Unless otherwise ordered by the Court or permitted in writing by the Designating Party,
14 a Receiving Party may disclose any information or item designated “ATTORNEYS’
15 EYES ONLY” only to:

16 (a) the Receiving Party’s outside counsel, as well as employees of
17 said outside counsel to whom it is reasonably necessary to disclose the information for
18 this litigation;

19 (b) Experts (as defined in this Order) of the Receiving Party to
20 whom disclosure is reasonably necessary for this litigation and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (c) the Court personnel assigned to this litigation;

23 (d) court reporters, their staffs, and professional vendors to whom
24 disclosure is reasonably necessary for this litigation and who have signed the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

26 (e) the author and recipients of the document or the original
27 source of the information.

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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
2 PRODUCED IN OTHER LITIGATION

3 If a Receiving Party is served with a subpoena or an order issued in other
4 litigation that would compel disclosure of any Discovery Material, the Receiving Party
5 must so notify the Designating Party, in writing immediately and in no event more than
6 five business days after receiving the subpoena or order. Such notification must include
7 a copy of the subpoena or court order. The Receiving Party also must immediately
8 inform in writing the Party who caused the subpoena or order to issue in the other
9 litigation that some or all of the material covered by the subpoena or order is the subject
10 of this Protective Order. In addition, the Receiving Party must deliver a copy of this
11 Stipulated Protective Order promptly to the Party in the other action that caused the
12 subpoena or order to issue.

13 The purpose of imposing these duties is to alert the interested parties to the
14 existence of this Protective Order and to afford the Designating Party in this case an
15 opportunity to try to protect its confidentiality interests in the court from which the
16 subpoena or order issued. The Designating Party shall bear the burdens and the
17 expenses of seeking protection in that court of its confidential material – and nothing in
18 these provisions should be construed as authorizing or encouraging a Receiving Party in
19 this action to disobey a lawful directive from another court.

20 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
22 Protected Material to any person or in any circumstance not authorized under this
23 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
24 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
25 all copies of the Protected Material, (c) inform the person or persons to whom
26 unauthorized disclosures were made of all the terms of this Order, and (d) request such
27 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that
28 is attached hereto as Exhibit A.

1 10. FILING PROTECTED MATERIAL

2 Without written permission from the Designating Party, or a court order secured
3 after appropriate notice to all interested persons and after following the procedures
4 provided for in Local Rule 79-5.1, a Party may not file in the public record in this action
5 any Protected Material.

6 11. FINAL DISPOSITION

7 Unless otherwise ordered or agreed to in writing by the Producing Party, within
8 60 days after the final termination of this action, each Receiving Party must return all
9 Protected Material to the Producing Party. As used in this subdivision, “all Protected
10 Material” includes all copies, abstracts, compilations, summaries or any other form of
11 reproducing or capturing any of the Protected Material. With permission in writing from
12 the Designating Party, the Receiving Party may destroy some or all of the Protected
13 Material instead of returning it. Whether the Protected Material is returned or destroyed,
14 the Receiving Party must submit a written certification to the Producing Party (and, if
15 not the same person or entity, to the Designating Party) by the 60-day deadline that
16 identifies (by category, where appropriate) all the Protected Material that was returned
17 or destroyed and that affirms that the Receiving Party has not retained any copies,
18 abstracts, compilations, summaries or other forms of reproducing or capturing any of
19 the Protected Material.

20 Notwithstanding this provision, counsel are entitled to retain an archival copy of
21 all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
22 work product, even if such materials contain Protected Material. Any such archival
23 copies that contain or constitute Protected Material remain subject to this Protective
24 Order as set forth in Section 4 (DURATION), above.

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of
27 any person to seek its modification in the future.

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12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Inadvertent Production of Privileged Documents. If a Party, through inadvertence, produces any document or information that it believes is immune from discovery pursuant to an attorney-client privilege, the work product privilege, or any other privilege, such production shall not be deemed a waiver of any privilege, and the Producing Party may give written notice to the Receiving Party that the document or information produced is deemed privileged and that return of the document or information is requested. Upon receipt of such notice, the Receiving Party shall immediately gather the original and all copies of the document or information of which the Receiving Party is aware, in addition to any abstracts, summaries, or descriptions thereof, and shall immediately return the original and all such copies to the Producing Party. Nothing stated herein shall preclude a Party from challenging an assertion by the other Party of privilege or confidentiality.

IT IS SO ORDERED.

Dated: July 22, 2014

By: /s/ FREDERICK F. MUMM
Hon. FREDERICK F. MUMM
U.S. District Court Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print full name],
 of _____ [print full address],
 declare under penalty of perjury that I have read in its entirety and understand the
 Stipulated Protective Order that was issued by the United States District Court for the
 Central District of California in the case of *Star Fabrics, Inc. v. Hautelook, Inc., et al.*,
 Case No. CV14-3159-JFW (FFMx). I agree to comply with and to be bound by all of
 the terms of this Stipulated Protective Order and I understand and acknowledge that
 failure to so comply could expose me to sanctions and punishment in the nature of
 contempt. I solemnly promise that I will not disclose in any manner any information or
 item that is subject to this Stipulated Protective Order to any person or entity except in
 strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
 the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action.

I hereby appoint _____ [print full name]
 of _____ [print full address and
 telephone number] as my California agent for service of process in connection with this
 action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____